

A-Engrossed
Senate Bill 328

Ordered by the Senate April 20
Including Senate Amendments dated April 20

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Judiciary for Oregon Law Commission)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Modifies [*definitions*] **definition** of "mental disease or defect" [*and "serious mental condition"*] for purposes of committing young persons alleged to be within jurisdiction of juvenile court to custody of Psychiatric Security Review Board when supervision and treatment is necessary for public safety.

Directs juvenile panel of Psychiatric Security Review Board to adopt rules defining type of dangerous behavior that requires temporary placement of young person with mental retardation in secure hospital or facility. Directs panel to consult with Department of Human Services before issuing proposed rules for public comment or adopting proposed rules.

A BILL FOR AN ACT

1
2 Relating to juveniles with mental disease or defect; creating new provisions; and amending ORS
3 419C.520, 419C.529 and 419C.538.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1. Sections 2 and 6 of this 2007 Act are added to and made a part of ORS**
6 **419C.529 to 419C.544.**

7 **SECTION 2. The juvenile panel of the Psychiatric Security Review Board exercises con-**
8 **tinuing jurisdiction over a young person committed to, or retained in, a hospital or facility**
9 **designated by the Department of Human Services under ORS 419C.529. If the board deter-**
10 **mines after review that the placement of a young person in the particular hospital or facility**
11 **is so inappropriate as to create a substantial danger to others, the board may direct the**
12 **department to place the young person in a specific type of facility or direct specific care or**
13 **supervision, but the actual placement of the young person is the responsibility of the de-**
14 **partment.**

15 **SECTION 3. ORS 419C.520 is amended to read:**

16 419C.520. As used in ORS 419C.411, 419C.522 to 419C.527 and 419C.529 to 419C.544:

17 (1) "Conditional release" includes but is not limited to the monitoring of mental and physical
18 health treatment.

19 (2) "Mental disease or defect" does not include[:]

20 [(a)] an abnormality;

21 [(A)] (a) Manifested only by repeated criminal or otherwise antisocial conduct;

22 [(B)] (b) Constituting solely a personality disorder; or

23 [(C)] (c) Constituting solely a conduct disorder[: or].

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 *[(b) A mental defect manifesting in significantly subaverage general intellectual functioning that is*
2 *accompanied by significant limitations in adaptive functioning in at least two areas or characterized*
3 *by severe and pervasive impairment manifested during the developmental period.]*

4 (3) “Serious mental condition” means a condition that requires supervision and treatment ser-
5 vices for the safety of others and is:

- 6 (a) A mental illness of major depression;
- 7 (b) A mental illness of bipolar disorder; or
- 8 (c) A mental illness of psychotic disorder.

9 **SECTION 4.** ORS 419C.529 is amended to read:

10 419C.529. (1) After the entry of a jurisdictional order under ORS 419C.411 (2), if the court finds
11 by a preponderance of the evidence that the young person, at the time of disposition, has a serious
12 mental condition or has a mental disease or defect other than a serious mental condition and pre-
13 sents a substantial danger to others, requiring conditional release or commitment to a hospital or
14 facility designated **on an individual case basis** by the Department of Human Services **as provided**
15 **in subsection (6) of this section**, the court shall order the young person placed under the juris-
16 diction of the Psychiatric Security Review Board.

17 (2) The court shall determine whether the young person should be committed to a hospital or
18 facility designated **on an individual case basis** by the department, **as provided in subsection (6)**
19 **of this section**, or conditionally released pending a hearing before the juvenile panel of the Psy-
20 chiatric Security Review Board as follows:

21 (a) If the court finds that the young person is not a proper subject for conditional release, the
22 court shall order the young person committed to a **secure** hospital or a **secure intensive com-**
23 **munity inpatient** facility designated **on an individual case basis** by the department, **as provided**
24 **in subsection (6) of this section**, for custody, supervision and treatment pending a hearing before
25 the juvenile panel in accordance with ORS 419C.532, 419C.535, 419C.538, 419C.540 and 419C.542 and
26 shall order the young person placed under the jurisdiction of the board.

27 (b) If the court finds that the young person can be adequately controlled with supervision and
28 treatment services if conditionally released and that necessary supervision and treatment services
29 are available, the court may order the young person conditionally released, subject to those super-
30 visory orders of the court that are in the best interests of justice and the young person. The court
31 shall designate a qualified mental health **or developmental disabilities** treatment provider or state,
32 county or local agency to supervise the young person on release, subject to those conditions as the
33 court directs in the order for conditional release. Prior to the designation, the court shall notify the
34 qualified mental health **or developmental disabilities** treatment provider or agency to whom con-
35 ditional release is contemplated and provide the qualified mental health **or developmental disabil-**
36 **ities** treatment provider or agency an opportunity to be heard before the court. After receiving an
37 order entered under this paragraph, the qualified mental health **or developmental disabilities**
38 treatment provider or agency designated shall assume supervision of the young person subject to the
39 direction of the juvenile panel. The qualified mental health **or developmental disabilities** treatment
40 provider or agency designated as supervisor shall report in writing no less than once per month to
41 the juvenile panel concerning the supervised young person’s compliance with the conditions of re-
42 lease.

43 (c) For purposes of determining whether to order commitment to a hospital or facility or con-
44 ditional release, the primary concern of the court is the protection of society.

45 (3) In determining whether a young person should be conditionally released, the court may order

1 examinations or evaluations deemed necessary.

2 (4) Upon placing a young person on conditional release and ordering the young person placed
3 under the jurisdiction of the board, the court shall notify the juvenile panel in writing of the court's
4 conditional release order, the supervisor designated and all other conditions of release pending a
5 hearing before the juvenile panel in accordance with ORS 419C.532, 419C.535, 419C.538, 419C.540
6 and 419C.542.

7 (5) When making an order under this section, the court shall:

8 (a) Determine whether the parent or guardian of the young person is able and willing to assist
9 the young person in obtaining necessary mental health **or developmental disabilities** services and
10 is willing to acquiesce in the decisions of the juvenile panel. If the court finds that the parent or
11 guardian:

12 (A) Is able and willing to do so, the court shall order the parent or guardian to sign an irrev-
13 ocable consent form in which the parent agrees to any placement decision made by the juvenile
14 panel.

15 (B) Is unable or unwilling to do so, the court shall order that the young person be placed in the
16 legal custody of the Department of Human Services for the purpose of obtaining necessary mental
17 health **or developmental disabilities** services.

18 (b) Make specific findings on whether there is a victim and, if so, whether the victim wishes to
19 be notified of any board hearings concerning the young person and of any conditional release, dis-
20 charge or escape of the young person.

21 (c) Include in the order a list of the persons who wish to be notified of any board hearing con-
22 cerning the young person.

23 (d) Determine on the record the act committed by the young person for which the young person
24 was found responsible except for insanity.

25 (e) State on the record the mental disease or [*defense*] **defect** on which the young person relied
26 for the responsible except for insanity defense.

27 **(6) When the department designates a hospital or facility for commitment of a young**
28 **person under this section, the department shall take into account the care and treatment**
29 **needs of the young person, the resources of the department and the safety of the public.**

30 **SECTION 5.** ORS 419C.538 is amended to read:

31 419C.538. (1) When the juvenile panel of the Psychiatric Security Review Board orders a young
32 person conditionally released under ORS 419C.532 (4), the juvenile panel may designate a qualified
33 mental health **or developmental disabilities** treatment provider or state, county or local agency to
34 supervise the young person on release subject to those conditions as the juvenile panel directs in
35 the order for conditional release. Prior to the designation, the juvenile panel shall notify the quali-
36 fied mental health **or developmental disabilities** treatment provider or agency to whom conditional
37 release is contemplated and provide the qualified mental health **or developmental disabilities**
38 treatment provider or agency an opportunity to be heard before the juvenile panel. After receiving
39 an order entered under ORS 419C.532 (4), the qualified mental health **or developmental disabilities**
40 treatment provider or agency designated shall assume supervision of the young person pursuant to
41 the direction of the juvenile panel.

42 (2) Conditions of release contained in orders entered under ORS 419C.532 (4) may be modified
43 from time to time and conditional release may be terminated by order of the juvenile panel as pro-
44 vided in ORS 419C.532 and 419C.542.

45 (3)(a) As a condition of release, the juvenile panel may require the young person to report to

1 any state, county or local mental health **or developmental disabilities** facility for evaluation.
2 Whenever medical, psychiatric or psychological treatment is recommended, the juvenile panel may
3 order the young person, as a condition of release, to cooperate with and accept the treatment of the
4 facility.

5 (b) The facility to which the young person has been referred for evaluation shall perform the
6 evaluation and submit a written report of its findings to the juvenile panel. If the facility finds that
7 treatment of the young person is appropriate, the facility shall include its recommendations for
8 treatment in the report to the juvenile panel.

9 (c) Whenever treatment is provided by the facility, the facility shall furnish reports to the ju-
10 venile panel on a regular basis concerning the progress of the young person.

11 (d) The facility shall comply with any other conditions of release prescribed by order of the ju-
12 venile panel.

13 (4) If at any time it appears to the juvenile panel or the chairperson of the juvenile panel that
14 a young person has violated the terms of conditional release or that the mental health of the young
15 person has changed, the juvenile panel or the chairperson of the juvenile panel may order the young
16 person returned to a hospital or facility designated by the Department of Human Services for eval-
17 uation and treatment. A written order of the juvenile panel, or the chairperson of the juvenile panel
18 on behalf of the juvenile panel, is sufficient warrant for any peace officer to take the young person
19 into custody and transport the young person accordingly. A peace officer shall execute the order,
20 and the young person shall be returned as soon as practicable to a facility designated by the de-
21 partment. Within 20 days following the return of the young person to the facility designated by the
22 department, the juvenile panel shall conduct a hearing. At a hearing required by this subsection, the
23 state has the burden of proving the young person's lack of fitness for conditional release.

24 (5) The community mental health and developmental disabilities program director, the director
25 of the facility providing treatment for the young person on conditional release, a peace officer or a
26 person responsible for the supervision of a young person on conditional release may take a young
27 person into custody or request that the young person be taken into custody if there is reasonable
28 cause to believe the young person presents a substantial danger to others and that the young person
29 is in need of immediate custody, supervision and treatment. A young person taken into custody un-
30 der this subsection must immediately be transported to a hospital or facility designated by the de-
31 partment. Within 20 days following the return of the young person to the facility designated by the
32 department, the juvenile panel shall conduct a hearing. At a hearing required by this subsection, the
33 state has the burden of proving the young person's lack of fitness for conditional release.

34 (6)(a) A young person conditionally released under ORS 419C.532 (4) may apply to the juvenile
35 panel for discharge from or modification of an order of conditional release on the ground that the
36 young person no longer has a mental disease or defect or, if affected by a mental disease or defect
37 other than a serious mental condition, no longer presents a substantial danger to others and no
38 longer requires supervision or treatment services. Within 60 days after receiving an application
39 under this paragraph, the juvenile panel shall conduct a hearing. At a hearing required by this
40 paragraph, the young person has the burden of proving the young person's fitness for discharge or
41 modification of the order of conditional release. A young person may not apply for discharge or
42 modification of conditional release more often than once every six months.

43 (b) Upon application by any qualified mental health **or developmental disabilities** treatment
44 provider or state, county or local agency responsible for supervision or treatment services pursuant
45 to an order of conditional release, the juvenile panel shall conduct a hearing to determine if the

1 conditions of release should be continued, modified or terminated. The application must be accom-
2 panied by a report setting forth the facts supporting the application. At a hearing required by this
3 paragraph, the state has the burden of proving the young person's lack of fitness for discharge or
4 modification of the order of conditional release.

5 **SECTION 6. (1) The juvenile panel of the Psychiatric Security Review Board, by rule**
6 **pursuant to ORS 183.325 to 183.410 and not inconsistent with law, may implement its policies**
7 **and set out its procedure and practice requirements and may promulgate such interpretive**
8 **rules as the panel deems necessary or appropriate to carry out its statutory responsibilities.**

9 **(2) The juvenile panel of the Psychiatric Security Review Board shall adopt rules defining**
10 **the type of dangerous behavior that requires the temporary placement of a young person**
11 **with mental retardation in a secure hospital or facility.**

12 **(3) The juvenile panel of the Psychiatric Security Review Board shall consult with the**
13 **Department of Human Services before issuing proposed rules for public comment and before**
14 **adopting rules under this section.**

15 _____